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Letter dated 24 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 5 June 2002 (S/2002/628).

The Counter-Terrorism Committee has received the attached supplementary report from Mozambique, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 2 June 2003 from the Permanent Representative of Mozambique to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

My Government has instructed me to transmit to the Counter-Terrorism Committee the follow-up report on domestic measures to prevent and combat terrorism in Mozambique pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Filipe **Chidumo**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

Enclosure

REPUBLIC OF MOZAMBIQUE
MINISTRY OF FOREIGN AFFAIRS AND COOPERATION
LEGAL AND CONSULAR DIVISION

FOLLOW UP REPORT TO THE UNITED NATIONS COUNTER TERRORISM COMMITTEE ON THE DOMESTIC MEASURES TO COMBAT TERRORISM IN MOZAMBIQUE

DONE IN MAPUTO, APRIL 2003

I. INTRODUCTION

Following the submission to the Counter Terrorism Committee by the Republic of Mozambique of its first report on the domestic measures to combat terrorism, a request was made to the competent authorities to produce and submit a further report on certain questions and comments derived from the consideration of the initial report.

In fulfilling its obligations under the Security Council Resolution 1373(2001) of 28 September 2001 which calls upon all States to report to the Counter Terrorism Committee, Mozambique takes pleasure in submitting additional report on the domestic measures to combat terrorism, hoping it will answer, if not all, most of the questions and comments raised with respect to its first report.

II. QUESTIONS AND ANSWERS

Paragraph 1

Q: Does Mozambique have any provisions regulating informal banking networks? Please outline any such provisions.

A: Mozambique does not have any provision for informal banking networks. However, it has in force the Act no. 15/99 of 1st November 1999, which governs the activities of institutions that provide credit and financial services. Pursuant to this Act, the exercise of bank activities in Mozambique is subject to the **principle of exclusivity,** under the terms of which only dully licensed/authorised entities can carry out bank and financial operations.

Articles 98 and 99 of this Act qualify as crime subject to a penalty of imprisonment by confinement the illegal and unduly exercise of activities reserved for credit institutions and financial societies.

Q: Please explain how the Mozambican legislation deals with the prohibition of financing terrorism as distinct from money laundering?

A: Financing terrorism and money laundering are two distinct legal concepts in Mozambique. The concept of terrorism is defined in article 13 of Act 19/91 of 16 August, whilst the concept of money laundering is defined in article 4, of Act no 7/2002 of 5 February.

With respect to prevention and punishment mechanisms of both terrorism and money laundering, it is important to distinguish the following:

a) Pursuant to article 13 of Act 19/91 of 16 August, terrorism is punishable with sentences that vary from 16 to 20 years of imprisonment, whilst in terms of Act no. 7/2002 of 5 February, money laundering is punishable with sentence that vary from 8 to 12 years of

imprisonment or 2 to 8 years of imprisonment, depending on the degree of involvement in carrying out the crime of money laundering.

The Law does not distinguish between the preventive and repression mechanism for financing of terrorism and money laundering (from the view point of control of financial and monetary operations), as both are dealt with in articles 10 to 24 of Act no. 7/2002 of 5 February and Circular no.2/SBM/2002, issued by the Central Bank Supervision and Markets Division of "Banco de Mocambique", (Central Bank of Mozambique). In terms of these legal instruments, the Bank is obliged to clearly identify its clients and should refuse to carry out suspicious operations (any operation involving 441 times more the minimum national wage without justification is considered a suspicious operation). The Bank is also, in terms of the same legal instrument obliged to keep record of all suspected bank and financial transactions, in which case the Bank must inform the Attorney General's Office of such transactions.

A similar control mechanism is stated in Act no3/96 of 4 January (Foreign Exchange Law) and its Rules and Regulations approved by the Notice no. 5/GGBM/96 of 19 July of the Governor of Central Bank of Mozambique. Under the terms of paragraph 3, Article 26 of above mentioned Rules and Regulations, **deposits in foreign currency which are above USD 10.000,OO (Ten thousand dollars) should be notified to the "Banco de Mocambique"(Central Bank of Mozambique)**. Equally, and under the combined provisions of article 6 of the Foreign Exchange Act and article 5 of the Rules and Regulations of the Foreign Exchange Act the purchase and sell of foreign currency involving amounts equal and above USD 5.000,00(five thousand dollars is subject to pre-authorisation by the Central Bank of Mozambique.

These foreign exchange mechanisms are aimed at providing the Central Bank of Mozambique with information regarding unlawful and suspecious operations. Two mechanisms are in place to enforce control, namely:

1. **"Ex-ante Control"**, through the requirement of Pre-authorisation for purchase of foreign currency. This mechanism allows the Central Bank to establish a direct contact with customers and, should there be suspected clients, to make due information available to the Attorney General's Office for investigation should there be suspicious;
2. **"Ex Post Control",** through registration and record of foreign exchange operations carried out by credit institutions and financial services, who have the responsibility to submit to the Central Bank, copies of all records of those transactions: These records of transactions should disclose information about the nature of operation, frequency of transaction and the end objective of such transactions carried out by people or entity, when they engage in foreign currency business. Should there be a suspicious in all the transactions the Attorney General's Office has to be informed.

The mechanism is applicable to both prevention of financing of terrorism and money laundering. Under this Acts, both crimes deserve equal treatment, as the legislator believes there are similarities in both the nature and procedures of both the crime of financing of terrorism and that of money laundering.

Q: What is the legal time frame within which a court has to decide to grant or deny authorisation for the freezing of funds, and how long does it take in practice to actually freeze funds?

A: By Law there is no time frame within which a court has to decide on freezing funds. However, its is common understanding that freezing of funds as a precautionary measure must be **immediately** taken as soon as a request is made by the trial court or judge in charge for criminal proceedings to that effect. However, an average of 48hours and maximum of five days has been the most common time frame, depending on the speed of the legal proceedings This is the time frame within which, and under the provisions of article 311 of the Criminal Proceedings Code, an alleged criminal is brought before the Trial Court for the formalisation of his/her charge, at which audience normally the Trial Court makes statements related to special precautionary measures that are intended and can be taken, such as the freezing of funds.

Q: What preventive controls and surveillance measures has Mozambique put in place to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organisations?

A: With respect to preventive and surveillance measures, financial societies and credit institutions under the supervision of the Central Bank of Mozambique are issued with instructions and guidelines aimed at monitoring financial and money operations of charitable, religious and cultural organisations, so as to ascertain whether those operations are in conformity with their activities. Financial Societies and Credit Institutions have the obligation to report to the Attorney General's Office any suspected cases with a view to initiate the necessary criminal investigation. Suspicious may be based on the following grounds:

1) Carrying out of transactions or operations involving huge amounts of money for which there are no precedent or fall beyond their normal volume of transactions.
2) Lack of correspondence between the amounts involved in such operations or transactions with the main present and future activities carried out by the charitable, religious and cultural organisations

Q: What measures are there to prevent or punish acts committed by terrorist organisations operating from Mozambique (Such as fundraising), but carried out in support of a cause not likely to affect Mozambican interests?

A: Regarding preventive measures for financing of terrorism by terrorist organisations operating from Mozambique, but carried out in support of cause not likely to affect Mozambican interest, it is applicable the same regime for general prevention established

under articles 10 to 24 of Act no 7/2002 of 5 February (Money Laundering Act), as well as the Circular no.2/SBM/2002, from the Central Bank Supervision and Markets Division. The Foreign Exchange Act regime as referred to above is equally applicable, as explained under question number 2, paragraph 1, above.

Consequently, there are no special measures for these cases, being applicable the same regime that is observed when it comes to prevention of financing of terrorism against Mozambican interests.

Q: What supervision is there of the implementation of the instructions given by the Bank of Mozambique to the financial institutions?

A: The Central Bank of Mozambique has in place an effective and functional mechanism of supervision of the implementation of the instructions given to financial institutions. It has a **Bank Supervision Department,** a very specialised Department that carries out supervision of the activities developed by financial organisations, mainly through exercise of control at two levels:

-Control through assessment of periodic information and data collected and submitted to the Central Bank of Mozambique by organisations under its supervision;
-Control through regular inspections carried out by a Team of Inspectors of the Central Bank of Mozambique on the activities of financial institutions.

Should irregularities be detected, penalties will be applicable, which may be the following:

-Fine
-Suspension of the authorisation for carrying out the activity
-Cancellation of the License

In each of the above-mentioned cases, should a criminal proceeding be necessary, the Legal Department of the Central Bank of Mozambique will inform the Attorney General's Office, accordingly.

Sub-paragraph 2(a)

Q: Article 13(2) of Act no 19/91 of 16 August criminalizes a number of weapon-related activities, if their authors "aimed or knew that they were aimed to perpetrate any crime against State security". How does Mozambican legislation criminalizes such activities, in cases in which the authors "aimed or knew that they were aimed to perpetrate crimes" against the security of foreign States and their inhabitants?

A: Pursuant to article 12 of Act no. 19/91 of 16 August, Mozambican legislation criminalizes acts of terrorism perpetrated against the security of foreign States and their inhabitants. The article states **"Perpetrates crime of mercenaries, liable for punishment with sentences**

varying from 16 to 20 years of imprisonment, who violently attempts to topple down, a legally constituted foreign government, recruiting and using for that purpose armed forces comprised, either entirely or partially by foreigners".

Paragraph 2 of the same article 12, states that **"whoever voluntarily recruits, organises, finance, provides, equips, trains and transports individuals referred to under previous paragraph, as well as those who take part in the forces referred to under the captioned paragraph, will be punished with a sentence, which is correspondent to the crime of mercenaries".**

Q: What measures are in place in Mozambique to prevent terrorists from obtaining weapons in its territory, in particular small arms or light weapons? Please outline the relevant legislation, including as regards export controls, concerning the acquisition and possession of weapons.

A: Mozambique deals with the issue of trafficking of small arms or weapons very seriously. It believes that bilateral arrangements with its neighbours sharing common boarders are paramount in tackling the matter. In that context, Mozambique has signed an agreement on cooperation and mutual assistance in combating trans-national crime, with South Africa, an important neighbour in terms of boarder sharing. In the light of this agreement, the Police Forces of both country do carry out regular joint-operations (Rachel is the name of one of the Joint Operations so far), aimed, inter alia, at locating and dismantling of firearms hideouts, which are the result of long years of internal conflict in Mozambique.

Similar arrangements are under consideration with other neighbouring countries.

Q: Please outline the legislative measures and practical steps which prevent entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Mozambique, including, in particular:

a) **The carrying out, within or from Mozambique, or recruiting, collecting of funds and soliciting of other forms of support from other countries;**
b) **Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.**

A: Pursuant to article 14 of the Statute no.11/73 of 6 January, the import, export, re-export and re-import of arms, both complete and incomplete, as well as spare parts, ammunitions and pistols, require an authorisation issued by the Ministry of Interior (Home Affairs). Under this Statute, the possession, carriage and use of firearms require a license issued by the competent authority. Illegal possession, carriage and use of firearms is an offence pursuant to Act no.10/87 of19 September, which impose penalties that vary from 6 month to a maximum of 12 years of imprisonment by confinement.

Sub-paragraph 2 (b)

Q: Please provide the CTC with information on the mechanism for inter-agency co-operation among the authorities responsible for narcotics control, financial trafficking and security with particular regard to the border controls designed to prevent the movement of terrorists.

A: Inter-agency co-operation among the authorities responsible for narcotics control, financial trafficking and security with particular regard to the boarder controls do exist between Mozambique and its neighbours. The co-operation takes the form of bilateral and regional agreements on exchange of information and data.

Pursuant to article 30 of Act no. 3/97 of 13 March, the "Gabinete Central de Prevencao e Combate a Droga-Central Office for Prevention and Combat of Drugs" must submit annual reports on illicit drug trafficking to international bodies, chiefly the United Nations institutions. Foreign entities may also request to the Central Office for Prevention and Combat of Drugs the submission of relevant information and data on drug trafficking and samples of products that may have been apprehended for criminal investigation and scientific purposes, as an established principle by article 84.

Q: Please clarify whether there are any provisions in existing laws, which exclude from Mozambique persons of kind mentioned in sub-paragraph 2(c) of the Resolution who are both asylum seekers.

A: Mozambique does not grant refugee status to convicted criminals or persons upon whom there are sufficient evidence of having committed war crimes, crimes against humanity and peace. This is in conformity with the Criminal Law of Mozambique, as well as major legal international instruments to which Mozambique is also signatory.

Furthermore, Mozambique does not grant refugee status to persons who have committed acts contrary to the principles and objectives of the United Nations on this matter, which have been incorporated in the Domestic Legal System of Mozambique, pursuant to article 2, of Act no. 21/98 of 31 of December.

Finally, Mozambique being signatory of international conventions and protocols against terrorism would not grant refugee status to persons who would have violated such international legal instruments.

Q: Please outline the particular legal provisions, which are instrumental in implementing sub-paragraph 2(d) of the Resolution

A: Sub-paragraph 2(d) of the UN Resolution 1373 calls on Member States to preclude anyone within their territories or jurisdictions from in any way aiding or abetting the planning, promoting, financing, executing acts of terrorism against other States. The sub-paragraph

also calls on Member States to contemplate adopting measures to prevent cross-boarder terrorism and the use of a State's territory for carrying out terrorist acts elsewhere.

Mozambique has in place a mechanism for immigration control pursuant to Act no 5/93 of 28 December, which spells out rules and norms regarding entry, stay and departure of foreigners in the country.

Pursuant to no 1 of article 5 of the above-mentioned Act, entry to Mozambique has to be made through officially established boarders. Article 6 spells out the requirements for entering Mozambique, the most important of which are that the passport must be valid and the entrant must possess a valid visa issued by the competent official Mozambican authorities.

However, Mozambique is aware of the loopholes in its boarder control mechanism, which result partially from the fact that Mozambican boarders are vast, lacking physical infrastructure, as well as the necessary equipment for monitoring all cross boarder activities. There is need, therefore, to strengthen the existing legislation and provision of technical assistance in this matter.

Sub-paragraph 2(e)

Q: Please outline the provisions, apart from the provisions of Article 13 of Act 19/91 mentioned in the report, which ensure that acts mentioned in sub-paragraph 2(e) of the Resolution are criminalized and that perpetrators of such acts are brought to justice.

A: As a matter of fact, article 13 o Act 19/91 of 16 August, enumerates a range of acts that under the Mozambican Law are considered acts of terrorism. The Mozambican Legal System does not make reference to collateral elements of terrorism, such as, supporting and financing of terrorism.

The Mozambican Law is yet to criminalize the support and financing of terrorism, and thus imposing punishment to persons who commit those acts of terrorism.

However, pursuant to article 5 of the Act no 19/91 of 16 August preparatory acts against State Security (high treason, espionage, terrorism and sabotage) are punishable with sentences that vary from 8 to 12 years of imprisonment by confinement.

Q: what is the competence of the courts of Mozambique to deal with criminal acts of each of the following kinds:

a) **An act committed outside Mozambique by a person who is a citizen of, or habitually resident in, Mozambique (Whether that person is currently present in Mozambique or not);**

b) **An act committed outside Mozambique by a foreign national who is currently in Mozambique**

A: a) The Mozambican Criminal Law, pursuant to article 53, no 5 of the Criminal Code allows for criminal proceedings being initiated against Mozambican nationals for crimes committed abroad, provided no bilateral convention or treaty stipulates otherwise. Pursuant to sub-paragraph 2 of the same article above mentioned, the Attorney General shall not have the initiative to «initiate such criminal proceeding, until such time the competent authorities in the foreign territory will have officially notified the Mozambican authorities of such crime by its national".

However, for that to happen, the following requirement must be met:

a) The criminal or delinquent is in Mozambique
b) The acts committed has to be classified as crime by both legislations
c) The criminal or delinquent must not have been tried in the territory where the crime took place.

The court where the criminal or delinquent has committed the crime is competent to carry out the trial pursuant to article 50 of the Criminal Proceedings Code. The trial must, therefore, take place in Mozambique, as an extradition of Mozambican nationals to another entity by Mozambican authorities is forbidden, pursuant to article 103, paragraph 3 of the Constitution.

In summary, the Mozambican Legal System welcomes the principle of **Aut dedere aut judicare**, and consequently, a Mozambican criminal who commits a crime abroad may be tried in Mozambique, provided he/she is in Mozambique and has not been previously tried abroad, in the territory where the crime was committed and the criminal offence is so classified as such in both countries.

b) With respect to an act committed outside Mozambique by a foreign national who is currently in Mozambique, the issue is resolved through the mechanism of extradition arrangements among the countries involved. Mozambique does not yet have extradition agreement with every country, but with just a few numbers. That is the case with Zimbabwe and Portugal.

Sub-paragraph 2(f)

Q: What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or support of terrorist acts) must be met and how long does it actually take in practice to implement such a request?

A: not answered yet!

Q: Please explain how the procedures for the issuance of identity papers and travel documents prevent the counterfeiting, forgery or fraudulent use of those documents and what other measures exist to prevent their forgery etc.

A: Mozambican passports have specific security features that can only be visualised using certain security devices by experts on the matter. Through Interpol General Secretariat, Mozambique makes available its passport specimen to various migration services around the world and also notifies the Secretariat of any changes. The specimen contains basic features, which are important to identify counterfeited, forged and fraudulent documents.

Sub-paragraphs 3 (a) and (b):

Q: How does Mozambique co-operate with other States, in particular in the framework of SADC, in order to implement the Resolution?

A: Mozambique is an active member of SADC, a regional community for economic development. SADC is aware that no development will take place without winning the struggle against institutional corruption and the cross-boarder organised crime that is still a reality in the region. SADC is also aware that no country alone can successfully fight and win this struggle without regional cooperation. With all these in mind, SADC encourages the establishment of regional bodies that bring together various experts from the police, customs, defence and security who discuss issues of common interest aimed at providing solutions for common problems. Mozambique takes an active part in these discussions.

Bilaterally, Mozambique is also engaged with its neighbours in carrying out joint activities, specially related to policing at boarder controls. Mozambique has Joint Commissions with all of its six neighbours, namely Malawi, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The Commissions meet regularly to discuss, bilateral cooperation, including terrorism and organised crime.

Q: What institutional mechanisms are in place to enable Mozambique to comply with these sub-paragraphs?

A: Internally, Mozambique has an "**Inter-institutional Group**" that deals with organised crime. The Group is a multi disciplinary one, which is comprised by the main institutions that deal with terrorism, from various angles, ranging from financing of terrorism, prosecution of terrorist acts and the implementation of court decisions. The institutions are the Ministry of Foreign Affairs and Co-operation, the Ministry of Justice, the Ministry of Planning and Finance, the Ministry of Interior (Home Affairs), the Central Bank of Mozambique and the Customs and Excise. Representatives of these institutions do meet regularly to discuss best ways and means to deal with organised crime and share useful information.

Sub-paragraph 3 (c)

Q: Has Mozambique entered into bilateral agreements to prevent and suppress terrorist attacks and take action against the perpetrators of such acts?

A: Mozambique does not yet have any bilateral agreements in the area of prevention and fight against terrorism. It does, however, recognise the need to do so, as a matter of urgency.

Q: With which countries has Mozambique entered into bilateral treaties on extradition and legal assistance?

A: Mozambique has entered bilateral agreements on extradition and legal assistance with the following countries: Angola, Cape Verde, Cuba, Guine-Bissau, Portugal, Sao Tome and Principe and Zimbabwe.

Sub-paragraph 3 (d) and (e)

Q: The CTC would welcome a progress report, in relation to the twelve relevant international conventions and protocols relating to terrorism

A: Mozambique has successfully concluded the process of accession to the twelve international conventions and protocols relating to terrorism. It has ratified the twelve conventions and protocols, as well as, the **Organisation of the African Union Convention on Terrorism.**

Following ratification of the above conventions and protocols, Mozambique is yet to engage in the implementation process of Resolution 1373 by enacting domestic legislation, which criminalizes those instruments.

Sub-paragraph 3(g)

Q: Article 103 of the Mozambican Constitution provides that *"Extradition for Political motives shall not be authorised"*. Please clarify how Mozambique ensures that claims of political motivation are not recognised as a ground for refusing requests for the extradition of alleged terrorists as required by sub-paragraph 3(g) of the Resolution.

A: Not answered

Paragraph 4

Q: Has Mozambique addressed any of the concerns expressed in paragraph 4 of the Resolution?

A: Not answered

OTHER MATTERS

Q: Could Mozambique please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution?

A: The following is the organizational chart of the **Central Bank of Mozambique** the financial supervision authority in Mozambique:

1) Pursuant to Act no.15/99 and Act no. 1/92 on the Organic Charter of "Banco de Mocambique-Central Bank of Mozambique", the Bank is competent to supervise credit institutions and financial societies, established under the terms of these two acts. The supervision of Insurance Services and Pension Funds is made by the Ministry of Planning and Finance.

The Bank Supervision Division at the Central Bank of Mozambique is the specialised unit that carries out the supervision activities of the above institutions. The Division comprises three areas, namely:

a) **The inspection to credit institutions**
b) **The inspection to financial societies**
c) **The licensing, litigation and regulation**

The inspection area collects information relating to financial and assets situation of supervised institutions. It also evaluates the level of implementation of approved rules and regulations (Financial and Exchange Legislation) governing the activities of such institutions.

In observing the rules and regulations approved in the context of Resolution 1373 of the Security Council, Mozambique has a Law on Money Laundering which is in force, under the terms of which daily inspections are aimed at collecting information and detecting suspected transactions related to financing of terrorism.

Under Circular no 2/SBM/2002 of 5 February of the Central Bank of Mozambique, Commercial Banks, credit institutions and financial societies have the responsibility to approve and implement procedures and mechanisms for prevention of illicit transactions.

As far as procedures are concerned, inspectors from the Supervision Division of the Central Bank have, when they come across violations of instructions issued by the Central Bank by the credit institutions and financial societies, to do the following:

-Filing the violation against the institution;
-Notify the violating institution, which may wish to prepare its defence;

-Charge the institution and present to it evidence of violation and propose to the Board of Directors of the Central Bank adequate measures. The Board will then take a final decision on the issue, which is normally a fine;
-Once the decision is taken, its has to be notified to the institution for implementation;
-Should there be criminal circumstantial evidence, the process will be submitted to the Central Bank Legal Department, which, in turn, will notify the Attorney General's Office.

3) The control of people and goods is jointly made by Customs, Migration and Police, under the terms of Acts no 5/93 of 28 December that defines the legal status of foreign nationals in Mozambique.